

Chapter 14 EROSION AND SEDIMENT CONTROL

ARTICLE I. IN GENERAL

Sec. 14-1. Definitions.

As used in this chapter, the following words and phrases shall have the meanings ascribed to them in this section, unless the context clearly indicates otherwise:

Agreement in lieu of a plan: A contract between the plan-approving authority and the owner which specifies conservation measures which must be implemented in the construction of a single-family residence; this contract may be executed by the plan-approving authority in lieu of a formal site plan.

Applicant: Any person submitting an erosion and sediment control plan for approval or requesting the issuance of a permit, when required, authorizing land disturbing activities to commence.

Board: The Virginia Soil and Water Conservation Board.

Certified inspector: An employee or agent of a program authority who (i) holds a certificate of competence from the board in the area of project inspection or (ii) is enrolled in the board's training program for project inspection and successfully completes such program within one (1) year after enrollment.

Certified plan reviewer: An employee or agent of a program authority who (i) holds a certificate of competence from the board in the area of plan review, (ii) is enrolled in the board's training program for plan review and successfully completes such program within one (1) year after enrollment, or (iii) is licensed as a professional engineer, architect, certified landscape architect or land surveyor pursuant to Article 1 (Section 54.1-400 et. seq.) of Chapter 4 of Title 54.1 of the Code of Virginia.

Certified program administrator: An employee or agent of a program authority who (i) holds a certificate of competence from the board in the area of program administration or (ii) is enrolled in the board's training program for program administration and successfully completes such program within one (1) year after enrollment.

City: The City of Hopewell.

Clearing: Any activity which removes the vegetative ground cover, including but not limited to, root mat removal or top soil removal or relocation.

Development: A tract of land developed or to be developed as a single unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain three (3) or more residential dwelling units.

Erosion and sediment control plan or conservation plan or plan: A document required by this chapter containing material for the conservation of soil and water resources of a unit or a group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory, and management information with needed interpretations and a record of decisions contributing to conservation treatment. The plan shall contain all major conservation decisions to assure that the entire unit or units of land will be so treated to achieve the conservation objectives. See section 14-28 for plan contents and standards.

Erosion impact area: An area of land not associated with current land disturbing activity but subject to persistent soil erosion resulting in the delivery of sediment onto neighboring properties or into state waters. This definition shall not apply to any lot or parcel of land of ten thousand (10,000) square feet or less, used for residential purposes or to shorelines where the erosion results from wave action or other coastal processes.

Excavating: Any digging, scooping or other method of removing earth materials.

Filling: Any depositing or stockpiling of earth materials.

Grading: Any excavating or filling of earthy materials or any combination thereof, including the land in its excavated or filled condition.

Land disturbing activity: Any land change which may result in soil erosion from water or wind and the movement of sediment into waters or onto lands, including, but not limited to, clearing, grading, excavating, transporting and filling of land, except the term shall not include those activities excluded pursuant to Va. Code § 10.1-560, and all amendments thereto.

Land disturbing permit: A permit issued by the City of Hopewell for clearing, filling, excavating, grading or transporting or any combination thereof, of all lands, except as excluded elsewhere in this chapter.

Local erosion and sediment control program or program: An outline of the various methods employed by the City of Hopewell to regulate land disturbing activities and thereby minimize erosion and sedimentation in compliance with the state program and may include such items as local ordinances, policies and guidelines, technical materials, inspection, enforcement and evaluation.

Owner: The owner or owners of the freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee or other person, firm or corporation in control of a property.

Permittee: The person to whom the permit authorizing land disturbing activities is issued or the person who certifies that the approved erosion and sediment control plan will be followed.

Person: Any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town or other political subdivision of the commonwealth, any interstate body, or any other legal entity.

Plan-approving authority: The board, the program authority, or a department of the program authority, responsible for determining the adequacy of a conservation plan submitted for land disturbing activities on a unit or units of lands and for approving plans.

Program authority: The City of Hopewell, which has adopted a soil erosion and sediment control program approved by the board.

Responsible land disturber: An individual from the project or development team, who will be in charge of and responsible for carrying out a and disturbing activity covered by an approved plan or agreement in lieu of a plan, who (i) holds a responsible land disturber certificate of competence, (ii) holds a current certificate of competence from the board in the areas of combined administration, program administration, inspection, or plan review, (iii) holds a current contractor certificate of competence for erosion and sediment control, or (iv) is licensed in Virginia as a professional engineer, architect, certified landscape architect or land surveyor pursuant to Article 1 (Sec. 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia.

Single-family residence: A structure arranged or designed to be occupied by one (1) family, the structure having only one (1) dwelling unit.

State erosion and sediment control program or state program: The program administered by the Virginia Soil and Water Conservation Board pursuant to the State Code, including regulations designed to minimize erosion and sedimentation.

State waters: All waters on the surface and under the ground wholly or partially within or bordering the commonwealth or within its jurisdiction.

Transporting: Any moving of earth materials from one place to another, other than such movement incidental to grading, when such movement results in destroying the vegetative ground cover either by tracking or the buildup of earth materials to the extent that erosion and sedimentation will result from the soil or earth materials over which such transporting occurs.

(Ord. of 2-24-76, § 2; Ord. No. 95-2, 1-25-95; Ord. No. 2006-05, 6-27-2006)

State law reference: Similar provisions, Code of Virginia, Tit. 10.1, Ch. 5, Art. 4.

Sec. 14-2. Exemptions from chapter.

The provisions of this chapter shall not apply to the following:

- (1) Such minor land disturbing activities as home gardens and individual home landscaping, repairs and maintenance work.
- (2) Individual utility service connections.
- (3) Installation, maintenance or repair of any underground public utility lines, when such activity occurs on an existing hard-surfaced road, street or sidewalk, provided such land disturbing activity is confined to the area of the road, street or sidewalk which is hard surfaced.
- (4) Septic tank lines or drainage fields, unless included in an overall plan for land disturbing activity relating to construction of the building to be served by the septic tank system.
- (5) Surface or deep mining activities authorized under a permit issued by the department of mines, minerals and energy.
- (6) Exploration or drilling for oil or gas, including the well site, roads, feeder lines, and off-site disposal areas.
- (7) Repair or rebuilding of the tracks, right-of-way, bridges, communication facilities and/or other related structures and facilities of a railroad company.
- (8) Disturbed areas for commercial or noncommercial uses of less than five thousand (5,000) square feet in size; provided, however, that the city council may reduce this exception to a smaller area of disturbed land and/or qualify the conditions under which this exception shall apply.
- (9) Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles.
- (10) Emergency work to protect life, limb or property, and emergency repairs; provided that, if the land disturbing activity would have required an approved erosion and sediment control plan, if the activity were not an emergency, then the land area disturbed shall be shaped and stabilized in accordance with the requirements of the plan approving authority.
- (11) Agricultural engineering operations, including but not limited to the construction of terraces, terrace outlets, check dams, desilting basins,

dikes, ponds not required to comply with the provisions of the Dam Safety Act, Va. Code § 10.1-604 et seq., ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage and land irrigation.

- (12) Shore erosion control projects on tidal waters when all of the land disturbing activities are within the regulatory authority of and approved by the local wetlands board, the Marine Resources Commission, or the United States Army Corps of Engineers.
- (13) Tilling, planting, or harvesting of agricultural, horticultural, or forest crops, or livestock feedlot operations; including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage and land irrigation. However, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Va. Code § 10.1-1100 et seq. or is converted to bona fide agricultural or improved pasture use as described in subsection B of Va. Code § 10.1-1163.

(Ord. of 2-24-76, § 3; Ord. No. 80-9, 6-24-80; Ord. No. 82-1, 2-23-82; Ord. No. 95-2, 1-25-95; Ord. No. 2006-05, 6-27-2006)

State law reference: See Code of Virginia, Tit. 10.1, Ch. 5, Art. 4, wherein many provisions of the above section are excluded from the definitions of the term "land disturbing activity," and are thus excluded under the state erosion and sediment control law.

Sec. 14-3. Enforcement of chapter generally.

Enforcement of this chapter shall rest with the city manager or his duly authorized representative, who shall enforce the provisions of this chapter as a portion of review, approval and inspection under the provisions of the subdivision ordinance.

(Ord. of 2-24-76, § 4; Ord. No. 95-2, 1-25-95; Ord. No. 2006-05, 6-27-2006)

Sec. 14-4. Chapter to be administered in conjunction with subdivision and zoning ordinances.

It is the intent of this chapter that it will be administered in conjunction with the city's subdivision and zoning ordinances wherein such apply to the development on previously subdivided land within the city.

(Ord. of 2-24-76, § 1; Ord. No. 95-2, 1-25-95; Ord. No. 2006-05, 6-27-2006)

Sec. 14-5. Inspection of land disturbing activities; notice and correction of defects.

(a) The city manager or his duly authorized representative, meeting the certification requirements of the Virginia Soil and Water Conservation Board, shall conduct periodic inspections in accordance with 4VAC50-30-60.B of projects undertaken under the provisions of this chapter to ensure compliance with approved plans and to determine the effectiveness of the control measures. The right of entry to conduct such inspection shall be expressly reserved to the city in the land disturbing permit. The permit holder or his duly authorized representative will be afforded the opportunity to accompany the inspector.

(b) If the city manager or his duly authorized representative, meeting the certification requirements of the Virginia Soil and Water Conservation Board, finds that a permit holder has failed to comply with the plan, he shall immediately serve notice upon such permit holder, by registered or certified mail at the address provided on the permit application, or in the plan certification, or by delivery at the site of the land disturbing activities to the agent or employee supervising such activities. Where the plan approving authority serves notice, a copy of the notice shall also be sent to the issuer of the permit. Such notice shall set forth specifically the measures needed to come into compliance with the plan, and shall specify the time within such measures shall be completed. If the permit holder fails to comply within the time specified in the notice, the permit is subject to revocation.

(c) If during the life of the project it is determined that there is failure to comply with the approved plan, the city manager, or his duly authorized representative, shall serve notice on the permit holder, at the address provided on the application, of such failure to comply with provisions of the permit. Such notice shall set forth the measures needed for compliance and the time within which such measures shall be completed. If compliance is not obtained within the time set forth in such notice, the permit holder shall be deemed to be in violation of this chapter.

(d) Upon receipt of a sworn complaint of a violation of this section, or Va. Code §§ 10.1-563 or 10.1-564 from the representative of the program authority or the board responsible for ensuring program compliance, the chief administrative officer, or his designee, of the program authority or the board may, in conjunction with or subsequent to a notice to comply as specified in subsection (b) above, issue an order requiring that all or part of the land disturbing activities permitted on the site be stopped until the specified corrective measures have been taken or, if land disturbing activities have commenced without an approved plan provided in Va. Code § 10.1-563, requiring that all of the land disturbing activities be stopped until an approved plan or any required permits are obtained. Where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the commonwealth, or where the land disturbing activities have commenced without an approved plan or any required permits, such an order may be issued whether or not the alleged violator has been issued a notice to comply as

specified in subsection (b) above. Otherwise, such an order may be issued only after the alleged violator has failed to comply with a notice to comply. The order shall be served in the same manner as a notice to comply, and shall remain in effect for seven (7) days from the date of service pending application by the enforcing authority or alleged violator for appropriate relief to the circuit court of the jurisdiction wherein the violation was alleged to have occurred.

(Ord. of 2-24-76, § 8; Ord. No. 95-2, 1-25-95; Ord. No. 2006-05, 6-27-2006)

State law reference: Similar provisions, Code of Virginia, Tit. 10.1, Ch. 5, Art. 4.

Sec. 14-6. Bond, deposit, etc., may be required for land disturbing activities.

(a) The city manager, or his duly authorized representatives, prior to the issuance of any grading, land disturbing, building or other permit involving any land disturbing activity, may require from any applicant a reasonable performance bond, cash escrow, letter of credit, any combination thereof or such other legal arrangements as is acceptable to the city manager, or his duly authorized representative, to ensure that measures can be taken by the city, at the applicant's expense, should the applicant or his agent fail, after proper notice within the time specified, to initiate and maintain appropriate conservation action which may be required of him because of his land disturbing activity. If the city takes such conservation action upon such failure by the permittee, the city may collect from the permittee for the difference should the amount of the reasonable cost of such action exceed the amount of the security held.

(b) Refund of such bond or release of such security, escrow or instruments shall be effective within sixty (60) days after the satisfactory completion or termination (final stabilization) of the project as determined by the City of Hopewell.

(c) Where land disturbing activities involve lands under the jurisdiction of more than one (1) local control program, an erosion and sediment control plan may, at the option of the applicant, be submitted to the board for review and approval rather than to each jurisdiction concerned. Where the land disturbing activity results from the construction of a single-family residence, an agreement in lieu of a plan may be substituted for an erosion and sediment control plan if executed by the plan-approving authority.

(d) The provisions of this section are in addition to all other provisions of law which relate to the issuance of such permits, and they shall not be construed to otherwise affect the requirements for such permits.

(Ord. of 2-24-76, § 7; Ord. No. 80-9, 6-24-80; Ord. No. 95-2, 1-25-95; Ord. No. 2006-05, 6-27-2006)

State law reference: Similar provisions, Code of Virginia, Tit. 10.1, Ch. 5, Art. 4.

Sec. 14-7. Appeals from decisions under chapter.

Any applicant or permit holder under the provisions of this chapter, who is aggrieved by any action of the city manager or his duly authorized representative in the interpretation of this chapter or in disapproving plans submitted in accordance with this chapter, shall have the right to appeal such decision or interpretation to the board of appeals provided for by article II, division 2, of chapter 11 of this Code. Such appeals shall be filed with the city manager, or his duly authorized representative, within ten (10) days of the decision deemed adverse to the applicant or the permit holder. The board of appeals shall hear the appeal within two (2) weeks from the date of appeal. The written decision of such board shall be final unless appealed to the court having jurisdiction over such matters within thirty (30) days from the date of the written decision of the board.

(Ord. of 2-24-76, § 11; Ord. No. 95-2, 1-25-95; Ord. No. 2006-05, 6-27-2006)

State law reference: Similar provisions, Code of Virginia, Tit. 10.1, Ch. 5, Art. 4.

Sec. 14-8. Penalty for violations of chapter.

Violations of any regulation or order of the board, any provision of the city's program, any condition of a permit issued under this chapter, or any provision of this chapter shall be subject to civil penalties as prescribed in Va. Code § 10.1-563, and all amendments thereto; however, violations punishable as criminal offenses under state law may be prosecuted as such.

(Ord. of 2-24-76, § 12; Ord. No. 95-2, 1-25-95; Ord. No. 2006-05, 6-27-2006)

State law reference: Similar provisions, Code of Virginia, Tit. 10.1, Ch. 5, Art. 4.

Secs. 14-9--14-25. Reserved.

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ARTICLE II. PERMIT AND PLAN FOR LAND DISTURBING ACTIVITIES

Sec. 14-26. Required.

(a) Except as otherwise provided in this chapter, no person shall engage in any land disturbing activity until such person has submitted to, has had reviewed by and has had approved by the city manager, or his duly authorized representative, a soil erosion and sediment control plan for such land disturbing permit therefor.

(b) Where the land disturbing activity results from the construction of a single-family residence, an "agreement in lieu of a plan" may be substituted for an erosion and sediment control plan if executed by the plan approving authority.

(c) No officer or employee of the city shall issue any grading, building or other permit for activities which involve exposure of land to erosion, as provided in this chapter, unless the applicant therefor submits with his application the approved plan from the city manager or his duly authorized representative, and the applicant's certification that such plan will be followed.

(d) For the purposes of this section, when land disturbing activity will be required of a contractor performing construction work pursuant to a construction contract, the preparation, submission, and approval of an erosion and sediment control plan shall be the responsibility of the owner.

(Ord. of 2-24-76, §§ 1, 7; Ord. No. 95-2, 1-25-95; Ord. No. 2006-05, 6-27-2006)

State law reference: Similar provisions, Code of Virginia, Tit. 10.1, Ch. 5, Art. 4.

Sec. 14-27. Permit application.

(a) Application for a permit required by this article shall be filed with the city manager or his duly authorized representative, who shall determine the required number of copies of such application.

(b) The application filed pursuant to this section shall be accompanied by an erosion and sediment control plan meeting the requirements of this article.

(Ord. of 2-24-76, §§ 4, 5; Ord. No. 95-2, 1-25-95; Ord. No. 2006-05, 6-27-2006)

Sec. 14-28. Standards, contents, format, etc., of plan.

(a) An erosion and sediment control plan filed under this article shall detail the methods and techniques to be utilized to control erosion and sedimentation. As a minimum, the plan shall follow the standards and format detailed in the current edition of the Virginia Erosion and Sediment Control Handbook, which format is hereby adopted

by reference as part of this chapter; provided, however, that wherever such information as is required therein duplicates that required under the city's zoning and subdivision ordinances, a single submission indicating all required information is acceptable. When any of the information required under the plan is deemed not necessary for the review of any particular plan in the opinion of the plan-approving authority, its submission may be waived in writing by the plan-approving authority, provided that state regulations and standards are met in the approved plan.

(b) The approved standards and specifications for control techniques to be utilized in preparing the plan are set forth in Chapter 3 of the current edition of the Virginia Erosion and Sediment Control Handbook, which standards and specifications are hereby adopted by reference as part of this chapter. State regulations contain the minimum standards, and if there are conflicts between the regulations and the handbook, the regulations take precedence.

(Ord. of 2-24-76, § 5; Ord. No. 82-2, 2-23-82; Ord. No. 95-2, 1-25-95; Ord. No. 2006-05, 6-27-2006)

Sec. 14-29. Plan review and inspection fee.

A plan review and inspection fee of twenty-five dollars (\$25.00) for the first acre of land or less in any project, plus ten dollars (\$10.00) for each additional acre of land, or part thereof, in excess of one (1) acre in such project, up to a maximum of one hundred fifty dollars (\$150.00), shall be paid to the city at the time of the filing of an application and an erosion and sediment control plan under this article.

(Ord. of 2-24-76, § 9; Ord. No. 95-2, 1-25-95; Ord. No. 2006-05, 6-27-2006)

State law reference: Authority to impose plan review fee, Code of Virginia, Tit. 10.1, Ch. 5, Art. 4.

Sec. 14-30. Approval or disapproval of plan.

(a) The city manager, or duly authorized representative, meeting the certification requirements of the board, shall, within forty-five (45) days, approve any plan submitted to him under this article, if he determines that the plan meets the conservation standards of the local control program, and if the person responsible for carrying out the plan certifies that he will properly perform the erosion and sediment control measures included in the plan and will comply with the provisions of this chapter. In addition as a prerequisite to approval of the plan, the person responsible for carrying out the plan shall provide the name of a responsible land disturber, who will be in charge of and responsible for carrying out the land disturbing activity, in accordance with the approved plan. Such approval of a plan does not in any way waive or abrogate any provisions of the zoning or subdivision ordinances, and such approval shall not imply that the provisions of any other ordinance have been met.

(b) The city manager, or his duly authorized representative, meeting the certification requirements of the board, shall act on all plans submitted to him within forty-five (45) days from receipt thereof by either approving said plan, in writing, or by disapproving said plan, in writing, and giving the specific reason for its disapproval. When a plan submitted for approval pursuant to this chapter is found by the city manager, or his duly authorized representative to be inadequate, he shall specify such modifications, terms and conditions as will permit approval of the plan, and he shall communicate those requirements to the applicant as provided above. The plan shall be deemed approved and the person shall be authorized to proceed with the proposed activity if approval or disapproval is not given within forty-five (45) days.

(c) Electric, natural gas and telephone utility companies, interstate and intrastate natural gas pipeline companies and railroad companies shall file general erosion and sediment control specifications annually with the board for review and written comment. The specifications shall apply to:

- (1) Construction, installation or maintenance of electric, natural gas and telephone utility lines, and pipelines; and
- (2) Construction of the tracks, rights-of-way, bridges, communication facilities, and other related structures and facilities of the railroad company.

Individual approval of separate projects within subdivisions (1) and (2) of this subsection is not necessary when board-approved specifications are followed. Projects not included in subdivisions (1) and (2) of this subsection shall comply with the requirements of the city erosion and sediment control program.

State agency projects are exempt from the provisions of this chapter except as provided for in the Va. Code § 10.1-564, as amended.

In order to prevent further erosion, the city may require approval of a plan for any land identified in the local program as an erosion impact area.
(Ord. of 2-24-76, § 6; Ord. No. 95-2, 1-25-95; Ord. No. 2006-05, 6-27-2006)

State law reference: Similar provisions, Code of Virginia, Tit. 10.1, Ch. 5, Art. 4.

Sec. 14-31. Effect of approval of plan or compliance therewith as to liability to third persons for damages.

The approval of any erosion and sedimentation control plan under the provisions of this chapter, or compliance with the conditions of such plan, shall not relieve any person from responsibility for damage to other persons or property, and shall not impose any liability upon the city for damage to other persons or property.
(Ord. of 2-24-76, § 13; Ord. No. 95-2, 1-25-95; Ord. No. 2006-05, 6-27-2006)

State law reference: See Code of Virginia, Tit. 10.1, Ch. 5, Art. 4, which provides that the compliance with state law provisions similar to this chapter shall be prima facie evidence in certain actions for damages that all requirements of law have been met, etc.

Sec. 14-32. Modification of approved plan.

(a) An approved plan may be changed by the city manager, or his duly authorized representative, meeting the certification requirements of the board, where inspection has revealed the inadequacy of the plan to accomplish the erosion and sediment control objectives of the plan, and appropriate modifications to correct the deficiencies of the plan are agreed to by the city manager, or his duly authorized representative, or where the person responsible for implementing the approved plan finds that, because of changed circumstances or for other reasons, the approved plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of this chapter, are agreed to by the city manager, or his duly authorized representative, and the person responsible for implementing the plan.

(b) The city manager, or his duly authorized representative, meeting the certification requirements of the board, shall have the authority to amend or alter the conditions of an erosion and sediment control plan at any time during the project, if control measures being practiced prove to be ineffective or because of changed circumstances. Such changes shall be made to assist the permit holder in controlling costs where less expensive methods are available which will accomplish the desired result, or where previously approved methods do not accomplish the purpose of this chapter.

(Ord. of 2-24-76, §§ 6, 10; Ord. No. 95-2, 1-25-95; Ord. No. 2006-05, 6-27-2006)

State law reference: Code of Virginia, Tit. 10.1, Ch. 5, Art. 4.

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